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EX PARTE

July 31, 2018

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Expedited Consideration for Declaratory Rulings On the transfer of traffic only under AT&T Tariff Section 2.1.8., and Related Issues; Primary Jurisdiction Referral From the NJ District Court; One Stop Financial, Inc., Group Discounts, Inc., Winback & Conserve Program, Inc., 800 Discounts, Inc., WC Docket No. 06-210

Dear Ms. Dortch:

As AT&T has previously explained, it will not respond—and cannot reasonably be expected to respond—to all of the repetitive and baseless submissions Petitioners have made in this proceeding. Nevertheless, AT&T feels obligated to advise the Commission that Petitioners' most recent filings¹ are a direct affront to the recent rulings of the federal court in the District of

¹ On July 10, 2018, Petitioners submitted a document entitled: "Office of General Counsel & FCC Staff[;] AT&T's Violation of FCC Ex parte [sic] Rules And FCC Staffs [sic] Responsibility to Report Conversations[;] Motion Compelling FCC Staff that attended any of 3 AT&T in Person FCC visits to Certify that it Advised AT&T Counsels the DC Court 2005 Order was not a Remand[;] Motion seeks the issuance of Public Notice in which AT&T counsels provide all FCC argument as to why the DC Court 2005 Order is not a Remand (Reversed Back to FCC)[;] Motion seeks FCC to address the ex parte condition as to 'Whether the person making the presentation 3 times persisted in doing so after being advised that the presentation was prohibited'[;] Motion seeks full disclosure by AT&T and FCC staff and if AT&T was advised at any time during any of the 3 in person meetings that that [sic] the 2005 DC Court Order was not a remand, or AT&T's Defenses were withdrawn and not tarified to Assert, then the FCC must dismiss AT&T's defenses in total and as per Ex Parte Rules Substantially Sanction AT&T's Counsels" (hereinafter the "*July 10th Submission*").

On July 12, 2018, Petitioners submitted a document entitled: "Further Support of Motion to Dismiss AT&T and Impose Sanctions Due to Violation of FCC Ex Parte Rules[;] Additional Evidence Added to Record Suggested by DC Court Counsels to Confirm for NJFDC That DC Court Order Was Not Remanded/Reversed to FCC.[;] DC Counsels Warn: The NJFDC Suggested Writ of Mandamus Filing Will Subject Plaintiffs or AT&T to DC Court and FCC Ethics Violations and Sanctions as The 1996 Referral Was Resolved – No Remand – And There Were No Open Issues[;] Additional Evidence Added to Record Suggested By FCC to Confirm for NJFDC That DC Court Order Was Not Remanded/Reversed to FCC" (capitalization altered) (hereinafter the "*July 12th Submission*").

SIDLEY

Ms. Marlene Dortch

July 31, 2018

Page 2

New Jersey. At a hearing in June, the District Court rejected Petitioners' latest attempt to lift the stay of judicial proceedings and directed them, in no uncertain terms, to seek formal resolution of the tariff-interpretation issue that the Court first referred to the Commission in 1995, and that it required Petitioners to re-submit to the Commission in 2006. In total defiance of that directive, Petitioners now seek dismissal of this proceeding. Petitioners' recent submissions are simply the latest installments in a flagrantly improper, multi-year campaign to dissuade the Commission from addressing an issue that a series of federal district court judges have made clear they want the agency to resolve. Indeed, in their *July 25, 2018 Submission*, Petitioners have gone so far as to declare that "[t]he FCC OGC has decided that . . . the case is over" and, as a consequence, "[t]here will be no more motions in a resolved case."² The Commission should put an end to this nonsense and resolve the referred issue.

As the Commission knows, this proceeding grows out of a dispute over whether Section 2.1.8 of AT&T Tariff No. 2 allowed AT&T to refuse to process the second leg of a proposed transfer in which Petitioners (1) would transfer their inbound 800 services plans (with the associated traffic) to Combined Companies Inc. ("CCI"), and (2) CCI would then transfer all of the revenue producing phone numbers and virtually all of the traffic associated with those plans, but not the plans themselves or associated obligations, to Public Service Enterprises of Pennsylvania ("PSE"). Following initial litigation in the district court, Judge Politan referred this issue to the Commission in 1995, and proceedings in the District Court were stayed. In October 2003, the Commission ruled that Section 2.1.8 did not apply to the proposed CCI/PSE transfer and thus did not prohibit it. The D.C. Circuit reversed that ruling on appeal, however, and held that Section 2.1.8 did apply to the proposed transfer. *See AT&T Corp. v. FCC*, 394 F.3d 933, 939 (D.C. Cir. 2005).

In the first of their many efforts to avoid a subsequent Commission decision concerning the meaning of Section 2.1.8, Petitioners moved the district court to lift the stay in 2005, claiming that the Section 2.1.8 issue had been resolved in their favor. Judge Bassler denied that request in June 2006, ruling that the Commission had not determined whether PSE had to assume shortfall and termination commitments under Section 2.1.8 because "it had already determined that § 2.1.8 did not apply" to the proposed transfer. Opinion, *Combined Companies, Inc. v.*

On July 23, 2018, Petitioners submitted a document (dated July 22, 2018) entitled: "AT&T Business Deals with State Bar Ethics Disciplinary Offices & New Jersey Federal District Judges [sic] Families" (hereinafter the "*July 23rd Submission*").

On July 25, 2018, Petitioners submitted a document entitled: "Exparte [sic] Notice; FCC OGC Determined Due to The Fact The 1996 Referral Was Resolved in 2005 and The 2006 Referral Has Been Removed From FCC Circulation Due to Being Moot, There Will Be No Public Notice Released on Plaintiffs [sic] Motion to Find AT&T Violated The FCC Ex Parte Rules" (capitalization altered) (hereinafter the "*July 25th Submission*").

² *July 25th Submission*, at 3.

SIDLEY

Ms. Marlene Dortch
July 31, 2018
Page 3

AT&T Corp., Civ. No. 95-908, 2006 WL 1540917, at *6 n.5 (D.N.J. June 1, 2006). Judge Bassler stated that the D.C. Circuit “did not expressly remand the case back to the FCC.” *Id.* at *5. Accordingly, he ordered Petitioners “to initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under § 2.1.8 of Tariff No. 2.” Order Den. Pls.’ Mot. to Lift Stay at 2, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. May 31, 2006), ECF No. 147.

Petitioners moved for reconsideration, arguing, among other things, that documents relating to a proposal to amend Section 2.1.8 (AT&T Transmittal 8179) and testimony by an AT&T lawyer about that proposal proved that Section 2.1.8 allowed transfers of traffic without requiring a transferee to assume the transferor’s shortfall and termination obligations. *See* Pls.’ Mot. for Recons., at 7-12, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. June 9, 2006), ECF No. 149. Judge Bassler stated that these materials made him “more convinced that the FCC” should interpret the tariff. Order Den. Pls.’ Mot. for Recons., at 3, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. Aug. 7, 2006), ECF No. 161.

In December 2014, Petitioners moved again to lift the District Court’s stay, claiming that “the question of which obligations are assumed on traffic transfers without the plan ha[d] already been answered multiple times.” Br. Supp. Pls.’ Mot. to Lift Stay & for Partial Summ. J., at 23, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. Dec. 15, 2014), ECF No. 166-1. In opposing that motion, AT&T explained that Judge Bassler had properly ruled that the Commission had not resolved the Section 2.1.8 issue, and that nothing had changed to cast doubt on that ruling. Judge Wigenton (who was assigned to the case after Judge Bassler retired) agreed, stating that she was “not convinced” by Petitioners’ mootness argument. Hr’g Tr. 29:20-22 (Mar. 18, 2015). In denying Petitioner’s motion, Judge Wigenton “strongly suggest[ed]” that Petitioners file a mandamus petition to compel a ruling on the referred issue. *Id.* at 30:19-31:3.

In February 2016, Petitioners again moved to lift the stay. They claimed that they had advised Commission staff of the District Court’s mandamus suggestion, and that staff had told them to review a January 12, 2007 procedural order entered in this proceeding. Br. Supp. Pls.’ Mot. to Lift Stay, at 5, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. Feb. 26, 2016), ECF No. 188. Although that order simply declined to expand the scope of the referral, Petitioners asserted that the order was a decision that the referral was moot. *Id.* at 3-8.

The District Court again denied Petitioners’ motion. Judge Wigenton explained that “the tariff construction question was properly referred to the FCC under the doctrine of primary jurisdiction,” and that the same reasons that justified the referral in 1995, 2006 and 2015 “are still relevant today.” Letter Order, at 4, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. May 18, 2016), ECF No. 210. She further noted that “neither new developments nor new arguments have arisen which would justify a different outcome.” *Id.* Additionally, the fact

Ms. Marlene Dortch
July 31, 2018
Page 4

that the Commission had announced that a decision was pending further weighed against lifting the stay. *Id.*

In April 2018, Petitioners filed yet another motion to lift the District Court’s stay. Among other things, they asserted that AT&T had allegedly waived all of its Section 2.1.8 defenses when it withdrew Transmittal 8179 in 1995, and that the D.C. Circuit did not “reverse” the Commission’s 2003 decision but merely “corrected the FCC on 2.1.8 account movement.” Reply Br. Supp. Pls.’ Mot. to Lift Stay, at 7, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. June 1, 2018), ECF No. 216. After they filed their reply brief, Petitioners asked Judge Wigenton to recuse herself, which she did, and the case was re-assigned to Judge Chesler. Letter, at 1-2, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. June 4, 2018), ECF No. 218; Order Reassigning Case, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. June 5, 2018), ECF No. 220.

At a hearing on June 6th, Judge Chesler denied Petitioners’ motion to lift the stay. In so ruling, he dismissed Petitioners’ argument that “there was never a reversal of the FCC by the D.C. Circuit” as “patently incorrect” and as “patently a mischaracterization of what the D.C. Circuit did.” Hr’g Tr. 16:14-18 (June 6, 2018) (attached hereto as Exhibit A). Judge Chesler also rejected the claim, advanced by Petitioners’ counsel at the hearing, that Section 2.1.8 did not have to be interpreted because “everything had been withdrawn in TR 8179” and “[t]he obligation issue wasn’t before the D.C. Court of Appeals.” *Id.* at 21:16-18. As Judge Chesler explained, the D.C. Circuit said the issue “wasn’t before them because the FCC’s decision made that resolution irrelevant, and once the D.C. Circuit reversed the FCC decision, then *it obviously did become relevant.*” *Id.* at 21:21-24 (emphasis added). Judge Chesler also pointedly told Petitioners: “Do not come back here with another application to lift the stay until the FCC has made a decision.” *Id.* at 31:7-9. *See also id.* at 31:21-23 (“[T]he case has been stayed. It was stayed for a reason. Do not come back here until the reason it was stayed has been resolved.”).

Remarkably, Petitioners responded to this clear directive by asking the Commission to *dismiss* this proceeding. Given the repeated statements (made by a series of judges) that the District Court needs the Commission to determine the meaning of Section 2.1.8’s “all obligations” language, Petitioners’ request is plainly improper. What makes the request egregiously improper is the frivolous nature of the arguments Petitioners have advanced for such relief. They argue (1) that AT&T violated the Commission’s ex parte rules by failing to disclose statements that Petitioners claim—with no evidentiary basis whatsoever—were made by Commission staff at ex parte meetings with AT&T over two years ago, and (2) that, if these statements were made, the Commission must dismiss AT&T’s defenses under Section 2.1.8. These claims are completely baseless.

1. There is no basis to Petitioner's claims regarding alleged violations of the Commission's ex parte rules.

Petitioners' allegations that AT&T violated the Commission's ex parte rules rest on a complete misunderstanding of those rules. First, citing Rule 1.1202(b)(2), Petitioners claim that AT&T could not make an oral ex parte presentation without affording them advance notice and an opportunity to attend. *July 10th Submission*, at 21 & n.8. But Rule 1.1202(b)(2) does not itself impose any requirements. It is a definitional provision that states that an oral presentation made without prior notice or opportunity for others to attend *constitutes* an "ex parte presentation." 47 C.F.R. § 1.1202(b)(2). The fact that an oral presentation is ex parte then triggers requirements set forth elsewhere in the Commission's ex parte rules.

Moreover, the Commission's ex parte rules do not require disclosure of statements made by *Commission staff* at an ex parte presentation. The rules expressly recognize that, in permit-but-disclose proceedings, ex parte presentations (*i.e.*, substantive merits communications) can be made either "to *or from* Commission decision-making personnel . . . , provided that *ex parte* presentations *to* Commission decision-making personnel are disclosed pursuant to paragraph (b) of this section." *Id.* § 1.1206(a) (1st and 3rd emphases added). Thus, the disclosure requirements apply only to ex parte presentations *to* Commission decision-makers by others, not communications *from* the Commission or its staff. AT&T therefore could not have violated these rules by failing to disclose what, if anything, Commission staff said at the ex parte meetings.

Finally, Petitioners claim that AT&T personnel were impermissibly "persistent" or failed to disclose the "facts and circumstances" of the ex parte meetings. *July 10th Submission*, at 25-26 & nn.20-24. The rules they cite for these propositions, however, apply where ex parte presentations are prohibited. *See* 47 C.F.R. § 1.1212(b)(5) (referring to parties who "persist[] in" making an ex parte presentation "after being advised that the presentation was *prohibited*") (emphasis added); *id.* § 1.1212(c) (requiring Commission personnel to describe "circumstances" surrounding presentations that they "believe are *prohibited*") (emphasis added). Ex parte presentations are not prohibited in this declaratory ruling proceeding, which is a permit-but-disclose proceeding.

In sum, AT&T plainly did not violate the Commission's ex parte rules. Petitioners' demands that AT&T and/or Commission staff be compelled to disclose any statements made by

staff at these meetings and that the Commission subject AT&T counsel to “the greatest amount of sanctions in FCC history,” *July 10th Submission*, at 28, are thus utterly groundless.³

2. There is no basis for dismissing this proceeding or AT&T’s Section 2.1.8 defenses based on any alleged statements by Commission staff.

There is likewise no merit to Petitioners’ claim that the Commission must dismiss this proceeding or AT&T’s Section 2.1.8 defenses *if* the Commission staff made the various statements that Petitioners claim were made at the ex parte meetings. First, the Commission “speaks officially only through its decisions,” *Joseph K. Lautieri*, 14 FCC Rcd. 8796, 8797 (1999), not through staff comments at ex parte meetings. More fundamentally, the alleged statements provide no basis for dismissing AT&T’s defenses.

Notwithstanding Petitioners’ fixation on the subject, the question of whether the D.C. Circuit remanded the case to the Commission is irrelevant. Judge Bassler concluded that the D.C. Circuit did *not* expressly remand the case to the Commission, which is why he *ordered* Petitioners to initiate this proceeding “to resolve the issue of precisely which obligations should have been transferred under § 2.1.8 of Tariff No. 2.” Order Den. Pls.’ Mot. to Lift Stay, at 2, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. May 31, 2006), ECF No. 147. That issue is therefore properly before the Commission, as Judge Wigenton (twice) and Judge Chesler have confirmed. That reality cannot be altered by statements, if any, that Commission staff or personnel in the D.C. Circuit made about whether the D.C. Circuit itself remanded that issue to the Commission.⁴

³ Petitioners also claim that AT&T counsel are being “monitored by FCC Ethics [and] State Bar Ethics,” *July 10th Submission*, at 28, but AT&T is aware of no active ethics investigations. Mr. Inga filed complaints with the New Jersey State Bar and the D.C. Circuit against numerous AT&T lawyers in 2014, but neither initiated proceedings. He also filed claims with Texas Bar Counsel in 2017, which concluded that he had failed to allege “a violation of the Texas Disciplinary Rules of Professional Conduct.” July 13, 2017 Letter from Tx. Bd. of Disciplinary Appeals to A. Inga (attached as Exhibit 21 in the Brown Certification, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. May 17, 2018), ECF No. 214-1). And Petitioners’ recent filings indicate that Commission staff have advised Inga that the agency lacks jurisdiction over his claims of alleged fraud before the District Court. See *July 23rd Submission*, at 3, 13. In fact, Judge Chesler chastised Petitioners for referring to AT&T counsel “as liars, as people who have schemed, have engaged in fraud, and similar ad hominem types of attacks” and made clear that, in the future, such attacks “will not be tolerated.” Hr’g Tr. 8:7-8, :17-18 (June 6, 2018) (Ex. A). Predictably, in their *July 23rd Submission*, Petitioners have turned their personal attacks on Judges and ethics officials, alleging bias by Judge Chesler, other Judges in the District Court of New Jersey, and personnel within the New Jersey and D.C. Bars.

⁴ Judge Chesler read footnote 2 of the D.C. Circuit’s 2005 opinion as a statement “that clearly sent this matter back to the FCC.” Hr’g Tr. 18:19 (June 6, 2018) (Ex. A). That reading confirms the reasonableness of AT&T’s position, in 2006, that the D.C. Circuit’s opinion should be viewed as a remand. For the reasons described above, however, the issue is irrelevant, as Judge Bassler rejected AT&T’s view and ordered Petitioners to initiate this proceeding.

Ms. Marlene Dortch

July 31, 2018

Page 7

Similarly, Petitioners' contention that the D.C. Circuit did not "reverse" the Commission's 2003 decision and instead merely "corrected" it is plainly wrong. First, Petitioners are openly trying to re-litigate a (frivolous) claim that Judge Chesler rejected. At the June 6th hearing, Petitioners' counsel claimed that "there was never a reversal of the FCC by the D.C. Circuit Court." Hr'g Tr. 16:14-15 (June 6, 2018) (Ex. A). As noted, Judge Chesler rejected this argument as "patently incorrect" and a total mischaracterization of what the D.C. Circuit did. *Id.* 16:16-18.

In its appeal of the 2003 Order, AT&T challenged the Commission's conclusion that Section 2.1.8 did not apply to the CCI/PSE transfer as "arbitrary, capricious, and contrary to law." Br. of Pet'r AT&T Corp., at 17, *AT&T Corp. v. FCC*, No. 03-1431 (D.C. Cir. June 30, 2004) (capitalization altered). In granting AT&T's petition for review, the D.C. Circuit agreed, holding that the Commission had "clearly erred" because its interpretation was "implausible on its face" and "eviscerate[d]" the very purpose of Section 2.1.8. *AT&T Corp. v. FCC*, 394 F.3d at 938-39. It further recognized that, under the Administrative Procedure Act, an agency decision must be "*reverse[d]*" "if its interpretations are 'not supported by substantial evidence, or the [Commission] has made a clear error of judgment.'" *Id.* at 936 (emphasis added). Consequently, the D.C. Circuit's decision "reversed" the Commission's decision, because it "overthr[ew] it by contrary decision." *Kelso v. U.S. Dep't of State*, 13 F. Supp. 2d 12, 18 (D.D.C. 1998) (quoting BLACK'S LAW DICTIONARY (Spec. Deluxe ed. 1979)); *see also United States v. Krilich*, 948 F. Supp. 719, 724 (N.D. Ill. 1996) ("reverse" means, *inter alia*, to "overthrow" (quoting BLACK'S LAW DICTIONARY (6th ed. 1990)), *aff'd*, 126 F.3d 1035 (7th Cir. 1997). Similarly, the D.C. Circuit's ruling also necessarily set aside the Commission's 2003 ruling with respect to Section 2.1.8. *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-14 (1971) ("agency action *must be set aside* if the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'" (emphasis added)).

Finally, Petitioners' claim that AT&T withdrew its Section 2.1.8 defenses in 1995 is absurd. Indeed, this argument assumes that, for 23 years, four federal judges have failed to appreciate that AT&T waived the defense that has been the subject of two separate referral orders (and four related rulings on motions to lift the stay). As Judge Politan explained, AT&T submitted Transmittal 8179 "to make explicit the implicit right that AT&T believe[d] it has under Tariff F.C.C. No. 2 to stop" the CCI/PSE transfer. Opinion, *Combined Companies, Inc. v. AT&T Corp.*, at 12, Civ. No. 95-908 (D.N.J. May 19, 1995), ECF No. 32. Contrary to Petitioners' simplistic view, the fact that AT&T later withdrew Transmittal 8179 does not mean that AT&T withdrew its underlying Section 2.1.8 defense. It meant that AT&T could not establish the validity of that defense by means of a clarifying amendment and instead would have to prove its validity based on an analysis of its text and purpose, which AT&T has done in this proceeding.

Indeed, Petitioners' contrary claim is refuted by Judge Politan's actions. Displeased by AT&T's withdrawal of the transmittal, he decided to grant "interim relief *pending the FCC's resolution of th[e] issue*" he had previously referred, and he entered an injunction in March 1996 based on a prediction about how he expected *the Commission* would interpret the tariff. Letter Opinion, at 7, 15-16, *Combined Companies, Inc. v. AT&T Corp.*, Civ. No. 95-908 (D.N.J. Mar. 5, 1996), ECF No. 54 (emphasis added). That course of conduct makes no sense if, as Petitioners now claim, AT&T's withdrawal of Transmittal 8179 in 1995 effectively withdrew its Section 2.1.8 defense. If that had been the case, Judge Politan would have simply rescinded his prior order referring the Section 2.1.8 issue, as the issue would have been entirely moot.⁵

The Commission likewise did not rule that withdrawal of Transmittal 8179 withdrew AT&T's Section 2.1.8 defense. To the contrary, the Commission recognized that the defense was before it and it rejected that defense, albeit on the mistaken view that Section 2.1.8 did not apply to the proposed CCI/PSE transfer at all. Petitioners focus on a later portion of the Commission's 2003 decision where the Commission declined to find that "AT&T had no legal basis and could not have effectively tariffed any changes or additions to Section 2.1.8 or any other published provision of its Tariff F.C.C No. 2, subsequent to January 1995, which could have substantively affected CCI's right to" transfer the traffic to PSE. *Combined Companies, Inc.*, 18 FCC Rcd. 21813, 21823 (2003). Unlike AT&T's Section 2.1.8 defense, however, this request for declaratory relief based on the possible effect of a later tariff amendment on an earlier transfer attempt *was* mooted by AT&T's withdrawal of Transmittal 8179.

Nor did the D.C. Circuit conclude that the meaning of Section 2.1.8's "all obligations" language was beyond the scope of the court's opinion "because the FCC only needed to interpret account movement not obligations, once all the Tr8179 defenses were FCC denied/AT&T withdrawn." *July 10th Submission*, at 7. As Judge Chesler pointed out, the D.C. Circuit declined to address the meaning of this language because the Commission's conclusion that Section 2.1.8 did not apply to the proposed CCI/PSE transfer made the resolution of that issue "irrelevant." Hr'g Tr. 21:21-24 (June 6, 2018) (Ex. A); *see also AT&T Corp. v. FCC*, 394 F.3d at 939 ("[T]his question was neither addressed by the Commission nor adequately presented to us."). Indeed, the D.C. Circuit never mentioned Transmittal 8179 in its opinion, much less stated that it would not address the meaning of "all obligations" because Transmittal 8179 had been withdrawn.

In sum, the issue referred by the District Court regarding the meaning of Section 2.1.8 still needs to be addressed and resolved by the Commission. Accordingly, the Commission

⁵ Apparently recognizing this, Petitioners suggest that the referral was still necessary because the Commission "had to interpret 2.1.8 the account movement part." *July 10th Submission*, at 5. But this, too, is absurd. If withdrawal of Transmittal 8179 withdrew AT&T's defense under Section 2.1.8, then no part of that provision would have been relevant.

SIDLEY

Ms. Marlene Dortch

July 31, 2018

Page 9

should focus its attention on resolving that issue and disregard Petitioners' continuing efforts to avoid resolution of that issue.

Sincerely,

/s/ James F. Bendoragel, Jr.

James F. Bendoragel, Jr.

Joseph R. Guerra

Attorneys for AT&T Corp.

Cc: Pamela Arluk
Richard Brown
Raymond Grimes

Exhibit A

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 CIVIL NO. 95-cv-908-SRC-SCM

4 COMBINED COMPANIES, INC., MOTION TO LIFT STAY
5 a Florida corporation,

6 Plaintiff,

7 vs.

8 AT&T CORP.,
9 a New York corporation,

10 Defendant.
11 _____

12 June 6, 2018
13 Newark, New Jersey

14 B E F O R E: HONORABLE STANLEY R. CHESLER, USDJ

15 Pursuant to Section 753 Title 28 United States Code, the
16 following transcript is certified to be an accurate record
17 as taken stenographically in the above-entitled
18 proceedings.

19 S/Jacqueline Kashmer
20 JACQUELINE KASHMER
21 Official Court Reporter

22
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BY: JAMES F. BENDERNAGEL, JR., ESQ.
For the Defendant

1 DEPUTY CLERK: This is Combined Companies vs. AT&T,
2 95-908. Please note your appearances for the record.

3 MR. GRIMES: Your Honor, Raymond Grimes here on
4 behalf of Combined Companies, Inc.

5 MR. BROWN: Good afternoon, your Honor. For
6 defendant AT&T, Richard Brown from Day Pitney. To my left
7 is James Bendoragel from the Sidley Austin firm. He's
8 been admitted pro hac vice and just because I know your
9 Honor is quite new to the case, Combined Companies itself
10 is a party that was dropped a long time ago. The actual
11 plaintiffs are the four other plaintiff entities.

12 THE COURT: I understand that. Okay. Counsel, first
13 of all, please make sure that you speak into the
14 microphone. Okay.

15 Now, as you are aware, Judge Wigenton recused herself
16 in this case and it has been reassigned to me, and I have
17 before me a motion to, in fact, lift the stay that was
18 previously imposed in this case.

19 Now, my first question is, Mr. Grimes --

20 MR. GRIMES: Yes.

21 THE COURT: -- your moving brief doesn't have any
22 signature on it.

23 MR. GRIMES: I thought that was corrected, your
24 Honor.

25 THE COURT: What I have does not have any signature

1 on it, and this was just printed off the docket just
2 moments ago.

3 If you could just -- Miss Trivino, if you could
4 please hand that to Mr. Grimes, I would appreciate it.

5 Your reply brief apparently does, but the moving
6 brief does not.

7 MR. GRIMES: Your Honor, I'm sorry. I thought that
8 was corrected when we submitted the reply brief also. What
9 would you like me to do, your Honor? Would you like me
10 to --

11 THE COURT: Well, it's usual to sign.

12 MR. GRIMES: -- the papers then.

13 THE COURT: And as counsel for defendant pointed out,
14 that brief is a little bit strange --

15 MR. GRIMES: It is, your Honor.

16 THE COURT: -- because it references conversations
17 which the author had with various individuals.

18 MR. GRIMES: Your Honor, I believe this was supposed
19 to be signed by Mr. Inga and that --

20 THE COURT: Signed by who?

21 MR. GRIMES: Mr. Inga as a certification, and I
22 thought that that was submitted.

23 THE COURT: Well, what's there does not purport to be
24 a certification. What's there purports to be your moving
25 brief and, as counsel for defendant pointed out at page two

1 of defense brief, it appears that it refers to Mr. Inga in
2 the first person.

3 MR. GRIMES: Yes, it does, your Honor.

4 THE COURT: For example, at page five, referring to
5 what someone from the tax bar council told me on almost an
6 hour phone call.

7 Now, did you have a conversation with somebody from
8 the tax bar?

9 MR. GRIMES: No, I did not.

10 THE COURT: Okay. And at page nine it refers to FCC
11 e-mails to myself and counsel Frank Arleo, and I assume
12 those e-mails were not to you.

13 MR. GRIMES: Not to me, your Honor.

14 THE COURT: Okay. So, how did this find its way into
15 a brief?

16 MR. GRIMES: Your Honor, I apologize for that. It
17 was supposed to be a certification and it's not.

18 THE COURT: No, it's not. It's a brief.

19 MR. GRIMES: It's a brief.

20 THE COURT: Before we actually get to the merits, the
21 other thing which strikes me is there are a number of
22 references to Judge Bassler, and I see that Judge Bassler
23 denied a prior application to lift this stay and wrote an
24 opinion on that, if I recall correctly.

25 MR. GRIMES: He did, your Honor.

1 THE COURT: All right. When I see references to
2 Judge Bassler, I mean, I, quite frankly, am taken a bit
3 aback because there's no "Judge" in front of "Bassler."
4 There is "Bassler," "Bassler was defrauded", "Bassler was
5 fooled", "Bassler" whatever.

6 Is that how you, in your practice in court, refer to
7 judges who have made decisions?

8 MR. GRIMES: No, your Honor.

9 THE COURT: I didn't think so. Are those Mr. Inga's
10 words?

11 MR. GRIMES: They are, your Honor, and I should have
12 gone over them a little more thoroughly before submitting
13 the papers. There was no disrespect meant, your Honor.

14 THE COURT: Well, I honestly have to tell you that I,
15 quite frankly, am a bit dismayed that an officer of this
16 court would refer to a federal district judge in such a,
17 quite frankly, disrespectful manner.

18 MR. GRIMES: Your Honor, it was not my -- I should
19 have gone over it. There was no disrespect meant. It was
20 my -- it was my oversight.

21 THE COURT: Well --

22 MR. GRIMES: My oversight. I take responsibility for
23 it.

24 THE COURT: I must tell you -- all right -- Mr.
25 Grimes, let me ask you this. When were you admitted to the

1 bar?

2 MR. GRIMES: 1988.

3 THE COURT: So, that's 30 years?

4 MR. GRIMES: Yes, your Honor.

5 THE COURT: And you're admitted in this court?

6 MR. GRIMES: Yes, your Honor.

7 THE COURT: And you're admitted in the Superior
8 Courts of the state of New Jersey?

9 MR. GRIMES: Yes, your Honor.

10 THE COURT: Okay. I take a look at this and I have
11 to ask myself, did you write these briefs?

12 MR. GRIMES: Your Honor, I reviewed a lot of the --
13 I've reviewed all the papers. Mr. Inga has lived this for
14 the last 23 years, so, a lot of the factual basis came from
15 Mr. Inga.

16 THE COURT: Okay.

17 MR. GRIMES: It's mostly facts and citations from
18 prior rulings by the FCC and other courts.

19 THE COURT: Now, Mr. Grimes, when you submit
20 something to this Court in your name, you're subject to
21 Rule 11. You know that, don't you? Correct?

22 MR. GRIMES: Correct, your Honor.

23 THE COURT: And that means that when you submit
24 something like this, it is your reputation and your
25 professionalism which is on the line. Do you understand

1 that?

2 MR. GRIMES: I understand, your Honor, yes.

3 THE COURT: Now, you've read this brief?

4 MR. GRIMES: I have read the brief, yes. Yes.

5 THE COURT: I can't count the number of times that
6 this moving brief and your reply brief refer to your
7 adversaries as liars, as people who have schemed, have
8 engaged in fraud, and similar ad hominem types of attacks.
9 And let me ask you something. Is my description of this
10 incorrect?

11 MR. GRIMES: No, your Honor.

12 THE COURT: Well, I've got to tell you, that type of
13 ad hominem attack on one's adversary does not promote
14 professionalism and collegiality in a profession.

15 MR. GRIMES: Agreed, your Honor.

16 THE COURT: And since I have been blessed with this
17 case now, what I will tell you is this will not be
18 tolerated.

19 MR. GRIMES: Understood, your Honor.

20 THE COURT: Your adversaries have to be treated with
21 respect. I, quite frankly, note that their opposition
22 papers contain nothing that are even remotely similar to
23 what these papers contain and, indeed, their reaction, if
24 anything, was mild, which was that footnote which, on
25 footnote one on page two, which referred to, in temperate

1 language, baseless claims of fraud, and went on from there.

2 Now, let me see if I understand what the history of
3 this case is.

4 As I understand it, there was an effort by various
5 companies which Mr. Inga owned or controlled to come up
6 with an arrangement whereby the telephone traffic that his
7 companies had under an AT&T tariff would be given to the
8 Combined Companies, Inc., and the Combined Companies, Inc.,
9 were then going to seek to have just the traffic but not
10 the plans transferred --

11 MR. GRIMES: Correct.

12 THE COURT: -- to another company, and that other
13 company had a much better tariff agreement with AT&T
14 because it had been individually negotiated to create a
15 more substantial discount for the 800 number traffic that
16 was involved. Is that correct?

17 MR. GRIMES: That is correct.

18 THE COURT: My understanding is that that particular
19 company, and when that deal was set up, AT&T refused to
20 accept the traffic and the transfer. Is that correct?

21 MR. GRIMES: That is correct.

22 THE COURT: As a result, the Combined Companies, Inc.
23 and Mr. Inga's companies sued AT&T in this court.

24 MR. GRIMES: That is correct.

25 THE COURT: And if I recall correctly, at some point

1 Judge Politan issued an order directing AT&T -- well, first
2 of all, as I understand it, Judge Politan concluded that
3 the key issue at stake was an issue of tariff
4 interpretation. Correct?

5 MR. GRIMES: Yes.

6 THE COURT: And that the tariff involved was Tariff
7 2. Is that correct?

8 MR. GRIMES: Correct.

9 THE COURT: And he concluded that under the primary
10 jurisdiction doctrine, that that should be referred to the
11 FCC to interpret whether or not this transfer was
12 permissible under Tariff No. 2. Is that correct?

13 MR. GRIMES: Well, he said that there was nothing
14 prohibiting the traffic from transferring, but he referred
15 it to the FCC for purposes of the obligations, whether all
16 obligations also had to transfer and the plan had to
17 transfer, but --

18 THE COURT: Okay. So, the answer is yes, he referred
19 it to the FCC.

20 MR. GRIMES: Yes.

21 THE COURT: Okay. I gather that he then concluded
22 that he was going to issue an order requiring AT&T to
23 accept the transfer pending FCC's determination on this.
24 Is that correct?

25 MR. GRIMES: That he did.

1 THE COURT: Okay. That was appealed by AT&T to the
2 Third Circuit Court of Appeals and in an unpublished
3 opinion Judge Politan was reversed on that issue. Is that
4 correct?

5 MR. GRIMES: What happened was AT&T had withdrawn
6 Tariff 8179, which contained any and all defenses that they
7 would have had in this matter, so, it never became part of
8 a tariff.

9 It took them so long to do this because Judge Politan
10 had decided that 8179 was going to control this case when
11 it was out of the FCC, but then it was withdrawn by AT&T.

12 Judge Politan, in another motion that was filed with
13 him, and it was for injunctive relief, Judge Politan
14 entered injunctive relief because AT&T had then filed a
15 different tariff after they withdrew 8179 and Judge Politan
16 said either counsel just completely misunderstood what his
17 ruling was in the prior matter and just wanted to include
18 either the entire kitchen sink or it was something that was
19 done intentionally to avoid having to comply with the prior
20 ruling where Judge Politan ordered them to get
21 clarification from the FCC, and it had been 140 days since
22 that time and nothing had been done, so, Judge Politan
23 said, I'm going to now basically interpret it because,
24 quite frankly, 218 doesn't really need -- in such layman's
25 terms, it really doesn't need interpretation, so, he

1 decided to interpret himself and ruled in favor of the
2 plaintiff, and then that decision was taken to the Third
3 Circuit and the Third Circuit said, No, it's going to go to
4 the FCC.

5 THE COURT: The Third Circuit held that Judge
6 Politan's granting of that injunction was in conflict with
7 his determination that primary jurisdiction required the
8 matter to be sent to the FCC. Correct?

9 MR. GRIMES: I'm sorry, your Honor. You have to
10 repeat that.

11 THE COURT: Okay. Do me a favor, is that Mr. Inga
12 next to you?

13 MR. GRIMES: Yes, it is.

14 THE COURT: Tell Mr. Inga, all right, he is there to
15 sit. When he gets a law license, he can stand. And the
16 next time he decides ghost write a brief and submit it to
17 the Court, he can expect that the Court will see clearly
18 that he, in fact, is the author and determine whether or
19 not Rule 11 sanctions should be imposed on the client.

20 Understand that, Mr. Inga?

21 MR. INGA: Your Honor --

22 MR. GRIMES: Just --

23 THE COURT: Mr. Inga, do you understand, you are not
24 a lawyer. Your corporations cannot proceed pro se. All
25 right. And your efforts at lawyering, as reflected in

1 these papers, leave an awful lot to be desired, to put it
2 charitably. So --

3 MR. INGA: Your Honor, I agree with you. The
4 frustration level was over -- overwhelming, and just the
5 only comment I would like to make, I did use "Bassler", not
6 in a derogatory sense. I understand your point. It was
7 simply one reason. I was looking to try to get in as much
8 content into the page cap as possible and I simply said
9 "Bassler" instead of "Judge Bassler."

10 I can understand where you --

11 THE COURT: Mr. Inga --

12 MR. INGA: -- was thinking I was being derogatory.

13 THE COURT: Mr. Inga, let me tell you something.
14 Okay. You have put Mr. Grimes in an extremely difficult
15 situation. Okay. I am being kind.

16 Mr. Grimes knows perfectly well what this Court could
17 do in terms of referring matters for discipline and
18 otherwise as a result of what has been submitted to the
19 Court. So, please, sit there, keep quiet, and don't try
20 being a lawyer again.

21 MR. INGA: Your Honor, I did transfer ownership for
22 my corporation to me personally to answer any questions
23 that you might have on a pro se basis.

24 As a corporate officer, I recognize that I have to be
25 represented by a counsel, my corporations.

1 What I did do was my corporation -- one of the
2 corporations -- there's four of them -- did transfer a
3 personal percentage to me as an individual. This way I
4 could answer any particular questions that you had and on a
5 pro se basis, because the case is very voluminous and I
6 lived it for 23 years. I can answer every question that
7 you had if Mr. Grimes was not able to and, so, I did
8 prepare a document that would allow me to answer any
9 questions for you, and I will do it on a professional
10 basis.

11 And I, again, I do apologize for the "Bassler"
12 citation. I can understand it coming off as derogatory or
13 demeaning. It wasn't done that way. It was simply word
14 count, trying to get as much content in the 30-page
15 allotment or the 15-page allotment that I was required.
16 I'm sorry.

17 THE COURT: Okay. Now, Mr. Grimes --

18 MR. GRIMES: Yes, sir.

19 THE COURT: -- Judge Politan was reversed.

20 MR. GRIMES: The underlying 1995 order was never
21 appealed or reversed. It was only the injunction from
22 1996.

23 THE COURT: The injunction was reversed.

24 MR. GRIMES: Yes, that was.

25 THE COURT: Judge Hedges issued an order staying this

1 case pending FCC resolution of the matter. Correct?

2 MR. GRIMES: Right.

3 THE COURT: Fine. The next significant matter here
4 is that before the FCC did anything, CCC, in fact, settled
5 with AT&T. Correct?

6 MR. GRIMES: Correct.

7 THE COURT: And that was 15 years ago.

8 MR. GRIMES: Then the matter -- the matter was not
9 taken up by the FCC. The FCC believed that all issues had
10 been resolved because of that settlement.

11 THE COURT: Mr. Grimes, answer my question. About 15
12 years ago.

13 MR. GRIMES: Yes.

14 THE COURT: Fine. Seven years after it was referred
15 to the FCC, the FCC finally came down with a decision. Is
16 that correct?

17 MR. GRIMES: That's correct.

18 THE COURT: Okay. During that period of time, did
19 Mr. Inga's companies contact the FCC to try to get a
20 decision?

21 MR. GRIMES: Your Honor, I was -- I believe they did.
22 I was not counsel back --

23 THE COURT: Did they file a mandamus?

24 MR. GRIMES: There was a petition made to the D.C.
25 Circuit Court.

1 THE COURT: Mr. Inga is --

2 MR. GRIMES: Not for mandamus.

3 THE COURT: -- vigorously --

4 MR. INGA: Sir, I did this. Can I please answer
5 your question for you? I will clear it up. Can I give
6 this to you, submit it to the Court?

7 THE COURT: First of all, please don't and, second of
8 all, I don't get anything until opposing counsel sees what
9 you're handing up. Okay.

10 While we are doing that, does anybody have the
11 citation to the D.C. Circuit's decision reversing the FCC
12 on this? I looked at it last night. Unfortunately, I left
13 some papers back in my car.

14 MR. GRIMES: Your Honor, just first, there was never
15 a reversal of the FCC by the D.C. Circuit Court.

16 THE COURT: Excuse me. That is patently incorrect
17 and that is patently a mischaracterization of what the D.C.
18 Circuit did. The D.C. Circuit concluded that the FCC had
19 made a totally erroneous decision. That's what reversal
20 is.

21 MR. GRIMES: They -- well, here, your Honor.

22 THE COURT: Mr. Grimes, Mr. Grimes --

23 MR. GRIMES: Yes, your Honor.

24 THE COURT: -- the FCC reached a determination that
25 the tariff did not apply at all to this transfer. Correct?

1 MR. GRIMES: No, that's not correct.

2 THE COURT: Do you have the --

3 MR. GRIMES: Your Honor, I have the citation.

4 THE COURT: Please give it to me.

5 MR. GRIMES: I have the citation.

6 THE COURT: Please give it to me.

7 MR. GRIMES: 394.

8 THE COURT: 394.

9 MR. GRIMES: F.3d.

10 THE COURT: F.3d.

11 MR. GRIMES: 933.

12 THE COURT: 933. The final paragraph of the decision
13 reads as follows:

14 "In sum, the FCC clearly erred in ruling that Section
15 2.1.8 of AT&T's tariff FCC number 2 does not apply to a
16 transfer of 'traffic'. As this was the threshold
17 determination of the FCC's order, we do not reach the
18 remaining issues addressed by the commission and argued by
19 the parties before us. We also do not decide precisely
20 which obligation should have been transferred in this case,
21 as this question was neither addressed by the commission,
22 nor adequately presented to us. All we decide is that
23 Section 2.1.8 cannot be read to allow parties to transfer
24 the benefits associated with 800 service without assuming
25 any obligations. The petition for review is granted."

1 That is a very nice way of saying that the FCC's
2 determination was reversed.

3 Now, the footnote then goes on to say in Footnote No.
4 2, "At oral argument, AT&T's counsel repeatedly stated that
5 Tariff No. 2 expressly required PSE" -- which is the entity
6 which was essentially the recipient of these transfers --
7 "to assume the volume commitments that form the heart of
8 AT&T's concerns in this case. See transcript of oral
9 argument at 11 and 13. In a motion submitted after the
10 argument, however, the Inga companies note that the only
11 obligations enumerated by Section 2.1.8 are outstanding
12 indebtedness for the service" and "the unexpired portion of
13 any applicable minimum payment period". Intervenor's
14 motion to clarify and correct the facts of the record at
15 four. How this enumeration affect the requirements that
16 new customers assume "all obligations of the former
17 customers", emphasis added, "is beyond the scope of our
18 opinion."

19 Now, that clearly sent this matter back to the FCC.
20 All right. Subsequently, a motion was made before Judge
21 Bassler to lift the stay. Judge Bassler wrote an
22 opinion --

23 MR. GRIMES: I see that.

24 THE COURT: -- and his opinion, among other things,
25 if I recall correctly, referred to some of the aspects of

1 the D.C. Circuit's opinion that I just referred to, and he
2 concluded that the FCC's role under the primary
3 jurisdiction doctrine still continued; in short, that an
4 interpretation of what requirements Section 2.1.8 impose
5 concerning the assumption of all obligations of the former
6 customer was something which the FCC in the first instance
7 should determine. Is that not correct?

8 MR. GRIMES: Yes, your Honor.

9 THE COURT: Fine. Now, he denied that. That's
10 somewhere around 2005.

11 MR. GRIMES: Your Honor, it's our position that --

12 THE COURT: Let me -- please answer my question.
13 2005.

14 MR. GRIMES: 2005.

15 THE COURT: Okay. Fine. Now, nothing happens after
16 that for years in terms of the FCC issuing a decision.
17 Correct?

18 MR. GRIMES: Correct.

19 THE COURT: Fine.

20 MR. GRIMES: But there was an opinion in 2007 as a
21 result of the referral by Judge Bassler to the FCC.

22 MR. BENDERNAGEL: Your Honor, Jim Bendernagel. Can I
23 just fill in a blank because the statement that he said
24 nothing happened isn't accurate as to what occurred during
25 this time period and rather than wait till the end and then

1 have to go back to the beginning of this story, can I just
2 fill in the blank?

3 THE COURT: Go right ahead.

4 MR. BENDERNAGEL: As I understand it, Judge Bassler
5 had two decisions in 2006, along the lines of what you just
6 stated because they asked for reconsideration, and he
7 denied that.

8 At that juncture they went back to the FCC and, in
9 September of 2006, filed a fairly lengthy document asking
10 for guidance from the FCC on the issue that Judge Bassler
11 had referred.

12 AT&T responded to that in December with a fairly
13 lengthy brief and in that brief, we pointed out that there
14 was a -- that they were trying to expand the referral by
15 adding some additional issues and the Inga companies, the
16 plaintiffs at that juncture, filed a motion in late
17 September of 2006, to ask for a brief time period in which
18 to go back to Judge Bassler and ask, Do you want these
19 other issues addressed?

20 And in early January the FCC said, No, that they
21 understood what Judge Bassler wanted and liked. That
22 decision is attached to the brief that we put in. And they
23 gave them a short period of time to reply, at which point
24 there was a lot more activity in the docket where there was
25 an attempt to expand the number of issues that were before

1 the Court, and then from about 2008 to about 2014, there
2 wasn't much activity. That's my understanding.

3 THE COURT: Okay. Thank you. Now, that's followed
4 by an application before Judge Wigenton, an application to
5 lift the stay, and Judge Wigenton denied that application
6 in an oral decision and then did a short memorandum opinion
7 in connection with that.

8 And the gist of it was, as I understood it, that the
9 same reasons which warranted the District Court in
10 referring this matter to the FCC to start off with was
11 still relevant, which is to determine, indeed, what
12 obligations were required to be transferred under Section
13 2.1.8, and she denied the stay. Correct?

14 MR. GRIMES: That's correct. But that's -- 2.1.8
15 didn't have to be interpreted. It was the -- the
16 obligations weren't an issue -- everything had been
17 withdrawn in TR 8179. The obligation issue wasn't before
18 the D.C. Court of Appeals and they made no decision on that
19 because they said it wasn't before them. And if I may,
20 Judge --

21 THE COURT: Stop, stop, stop. They said it wasn't
22 before them because the FCC's decision made that resolution
23 irrelevant, and once the D.C. Circuit reversed the FCC
24 decision, then it obviously did become relevant. They said
25 they weren't going to address it because FCC had not

1 addressed it at the commission level and, therefore, they
2 had nothing to review.

3 They don't sit as a court of original jurisdiction.
4 They review other procedures and other agencies.

5 The FCC had not decided that because, based upon
6 their decision, what obligations had to be assumed was
7 irrelevant since they simply said this transfer wasn't
8 covered by 2.1.8.

9 The D.C. Circuit said you're wrong. This Court sent
10 this matter to the FCC to decide, in fact, to what extent
11 that tariff and its limitations applied to this transfer,
12 and to this day the FCC has not given us an answer. And as
13 far as I can see, the only thing which changed between
14 Judge Wigenton denying the motion to lift the stay and now
15 is that, apparently, the FCC issued a draft opinion, as it
16 were, and then took it back.

17 Now, is that correct?

18 MR. GRIMES: Yes.

19 THE COURT: Okay.

20 MR. GRIMES: They took it back but now it came off of
21 circulation since -- first of all, Judge Wigenton never
22 referred to the 2007 FCC order, which was stating that
23 Judge Bassler's order for referral in June 2006 does not
24 expand the scope of the issue previously presented.

25 THE COURT: It doesn't. The issue which was

1 presented was the effect of 2.1.8 on this transfer. That
2 was what was sent to the FCC.

3 MR. GRIMES: Right. But 2.1.8, the only thing in
4 2.1.8 required two things to be transferred with the
5 traffic. The other things that AT&T was saying was in
6 TR --

7 THE COURT: Mr. Grimes --

8 MR. GRIMES: Yes, your Honor.

9 THE COURT: -- the problem is that you are asking
10 this Court in the first instance to answer the question
11 which this Court asked the FCC to answer and the FCC hasn't
12 answered it, and you're telling me your interpretation of
13 2.1.8, as opposed to AT&T's interpretation of the
14 obligations under 2.1.8, are all very interesting but, you
15 know something, in their infinite wisdom, Judge Politan,
16 followed by Judge Bassler, followed by Judge Wigenton,
17 decided that the determination in the first instance should
18 be by the FCC, and nothing has changed.

19 MR. GRIMES: Your Honor, the FCC took it off of
20 circulation, so, what our interpretation of this is is
21 because there is no issue, Judge Politan originally ruled
22 that the traffic transfer should be allowed. Any
23 obligations that were required under 2.1.8 were
24 transferred.

25 All these other things that were brought up by AT&T,

1 such as security, those were all addressed because Judge
2 Politan ruled on that in -- those were not part of the
3 tariff.

4 Now, when Judge Wigenton rules, Judge Wigenton
5 doesn't know about the FCC 2007 order. She never refers to
6 it.

7 THE COURT: Look, does the tariff have as one of its
8 provisions that customers assume all obligations of the
9 former customer?

10 MR. GRIMES: Yes.

11 THE COURT: Fine.

12 MR. GRIMES: Not 2.1.8, not all obligations. All
13 obligations that are in effect which were transferred.
14 AT&T was bringing up --

15 THE COURT: Mr. Grimes, look, I've got to tell you --
16 no, Mr. Inga, you are not going to do that.

17 MR. INGA: Your Honor, I'm pro se --

18 THE COURT: No, no, no.

19 MR. INGA: I filed the form to be able to answer
20 your question.

21 THE COURT: No. No. Look, this Court has a complete
22 record. It seems for some reason that the plaintiff in
23 this case wishes to ignore the explicit directions of this
24 Court.

25 Is it two years ago that Judge Wigenton strongly

1 urged that a mandamus petition be filed with the D.C.
2 Circuit?

3 MR. GRIMES: Yes.

4 THE COURT: Yes.

5 MR. GRIMES: That's what she put in her order, yes.

6 THE COURT: Fine. Has any mandamus petition been
7 filed?

8 MR. GRIMES: Your Honor, the reason --

9 THE COURT: All I'm asking is --

10 MR. GRIMES: No, no.

11 THE COURT: -- did it. No.

12 MR. GRIMES: But the case came off of circulation
13 from the FCC, which we interpret to mean that there are no
14 further issues to be decided.

15 THE COURT: And the answer is --

16 MR. GRIMES: So, if there was a mandamus petition,
17 we'd be requesting the D.C. Circuit to review something
18 that had no issue, something that was moot.

19 THE COURT: You know something, then the FCC would
20 issue something which actually told this Court why it was
21 moot and why there was nothing to decide if that's, in
22 fact, the case.

23 The point is, I've got a set of papers from you,
24 courtesy of Mr. Inga, which has all sorts of conversations
25 with staff people, which are not in the record, about

1 various opinions about everything under the sun, including
2 whether or not the Texas Bar Association believes that
3 attorneys on the other side have practiced in violation of
4 their ethical obligations or not, all sorts of opinions
5 about staff members at the FCC about what they think.

6 I can honestly tell you there is no judge in this
7 court who considers the opinions of agency staff members
8 which are not reduced to formal decisions by the agency as
9 having the slightest significance before this court.

10 If you want this stay to be lifted, you have the
11 agency issue a formal decision on this case which tells
12 this Court that those proceedings are over for whatever
13 reason so this Court can then decide what it is going to do
14 with the FCC's determination.

15 But until it does that, this Court does not see any
16 reason to disturb the reference. We sent it to the FCC
17 because they are experts in this field. That's why it was
18 done. That is the whole rationale behind the primary
19 jurisdiction doctrine.

20 If Mr. Inga wants this case to be resolved in this
21 court, the first thing to do is to get a final resolution
22 before the FCC.

23 I have no idea why they lifted that decision from
24 circulation. For all I know, and it was suggested I guess
25 to a certain degree in the opposing papers, is they may not

1 even have a quorum anymore, for all I know. All right.
2 But this stay is not going to be lifted until the FCC has
3 spoken. Nothing has changed. And Judge Wigenton was
4 extremely gracious in actually issuing a written opinion
5 following oral argument.

6 I'm not going to be so gracious. As far as this
7 Court is concerned, Judge Wigenton's suggestion was the
8 appropriate one. Do what you have to do to get a decision
9 from the FCC. When that has occurred, come back. Do not
10 try to persuade me that somehow this is moot. If the FCC
11 tells me it's moot, then I will listen.

12 Your application to lift the stay is denied in all
13 respects. There will be no further opinion. We will issue
14 our own order.

15 Now --

16 MR. GRIMES: Understood.

17 THE COURT: -- I don't expect to see another
18 application of this nature until the FCC has made a ruling,
19 and I will tell you that at this point, the Court indeed
20 has been extraordinarily indulgent about exercising its
21 prerogative of pursuing Rule 11 sanctions sui sponte. I'm
22 not going to do it. But I can honestly tell you if I have
23 a repetition of this while I have this case, it is
24 something I will consider.

25 MR. GRIMES: Understood, your Honor.

1 THE COURT: Now, finally, there is one additional
2 issue and, that is, Mr. Inga, if you want to appear pro se,
3 that can be done if you are suing in your individual
4 capacity. Don't tell me about I've transferred X, Y or Z.

5 The plaintiffs in this case in which you apparently
6 have the sole equity ownership interest are still legal
7 entities. If they become sole proprietors owned by you as
8 a sole proprietor, that's something different.

9 But you know something, when that happens, the
10 caption of this case is going to change. You are going to
11 have to substitute in as a party, and those parties are
12 going to be dismissed.

13 MR. INGA: I want to add parties, your Honor.

14 THE COURT: Sir, sir, I am extremely doubtful that
15 you can "add a party" as you suggest, but you do what you
16 think is appropriate. I have four entities here. Correct?

17 MR. INGA: My four corporations, correct.

18 THE COURT: Four corporations. All right. If you
19 think or your attorneys think that there is a way in which
20 you can participate pro se, you can take whatever steps you
21 believe are appropriate and your adversaries can take
22 whatever steps they believe are appropriate with regard to
23 whether or not you can proceed pro se, but understand
24 something also, even if somehow this is set up so that you
25 somehow have a party in this case in which you are, in

1 fact, suing in your own capacity, these other entities
2 still need legal counsel and, what's more, Mr. Inga, if and
3 when you do that, if I get papers like this again --

4 MR. INGA: I understand.

5 THE COURT: -- with all sorts of attacks on opposing
6 parties and similar type of conduct, I give you the same
7 warning I gave Mr. Grimes.

8 MR. INGA: It won't happen again, your Honor.
9 You're absolutely right. I'm frustrated and it shouldn't
10 have come out in the papers.

11 THE COURT: Sir, this is a court of law. That kind
12 of conduct will not be tolerated. As I said, you've got
13 ways to dispose of this. Go ahead and do it.

14 The other thing, quite frankly, is, and I tell you
15 candidly, this goes back to what year was the transfer?

16 MR. INGA: The transfer was in '95, and '96 was
17 Politan's injunction.

18 THE COURT: Fine.

19 MR. INGA: Your Honor, the only thing I'd like to
20 say to you is I think there's been one major issue here
21 that has not been recognized, that the 2003 FCC order
22 definitively stated that the obligation issues were no
23 longer to be decided. The defenses that AT&T raised in
24 2003 were off the table due to the non-vacated 1995 Politan
25 decision; that the non-vacated decision eliminated the

1 obligation aspects.

2 THE COURT: Sir, please, when you get your law
3 degree, you can argue. When you are properly here pro se,
4 I'll hear you.

5 Right now you are neither, and what I was going to
6 suggest is 1995 to 2015, which means this is 23 years --

7 MR. INGA: Correct.

8 THE COURT: -- I hope you've got other things to do
9 with your life.

10 MR. INGA: This is a major focus of my life, your
11 Honor.

12 THE COURT: Well, I will tell you, quite frankly,
13 then I feel sorry for you.

14 MR. INGA: Your Honor --

15 THE COURT: But after 23 years -- have you ever
16 talked with them about actually seeing if there's some
17 amicable resolution of this case?

18 MR. INGA: We're always willing to talk, your Honor.
19 I think there's just one last statement I'd like to make is
20 simple. If AT&T was correct, they would have been able to
21 do one single thing to end this case. If AT&T simply
22 provided evidence, we'll walk away from the case.

23 They can't produce evidence because the tariffs do
24 not allow what AT&T is saying; therefore, they have no
25 evidence and never been able to present evidence.

1 THE COURT: Okay. Sir, it's 23 years, Mr. Inga.
2 Okay.

3 MR. INGA: And no evidence has been presented in 23
4 years, your Honor.

5 THE COURT: Mr. Inga, this case is very reminiscent
6 of a Charles Dickens novel. If you wish to pursue it, I've
7 told you how to do it. Do not come back here with another
8 application to lift the stay until the FCC has made a
9 decision.

10 MR. INGA: I understand that, your Honor. There are
11 two other claims within this case that the FCC referred --

12 THE COURT: Mr. Inga, Mr. Inga --

13 MR. INGA: -- they're not our interpretation
14 issues --

15 THE COURT: Mr. Inga, Mr. Inga, I'm going to tell you
16 twice, two things. One, I am not going to entertain
17 argument from you. You want to become a lawyer, go to law
18 school.

19 MR. INGA: No. There's no argument. I was just
20 stating a fact that's in the order.

21 THE COURT: Mr. Inga, Mr. Inga, the case has been
22 stayed. It was stayed for a reason. Do not come back here
23 until the reason it was stayed has been resolved.

24 If in the interim you actually want to think about
25 doing something else other than pursuing what now appears

1 to be one of the longest running cases in this court, I
2 would suggest you have Mr. Grimes talk to your adversaries
3 because, Mr. Inga, you are too wrapped up in this case.

4 MR. INGA: Your Honor, you're right. I am wrapped
5 up.

6 THE COURT: So, Mr. Inga, all I'm saying is if you
7 want to get on with your life, have Mr. Grimes talk to
8 them, ask them to see if there's something reasonable which
9 can be done here.

10 Otherwise, good luck. Good luck before the FCC.
11 Good luck with your mandamus before the D.C. Circuit.

12 MR. INGA: There are two other issues, your Honor.

13 THE COURT: There aren't. There are not, Mr. Inga.
14 Mr. Inga, this matter is concluded.

15 Thank you. We will draw our own order. Thank you,
16 counsel.

17 MR. BENDERNAGEL: Thank you, your Honor.

18 (Whereupon the proceedings are adjourned.)
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